

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

DOCKET FILE COPY ORIGINAL

In the Matters of)

Implementation of the Local Competition)
Provisions of the Telecommunications Act)
of 1996)

CC Docket No. 96-98 ✓

Interconnection Between Local Exchange)
Carriers and Commercial Mobile Radio)
Service Providers)

CC Docket No. 95-185

Area Code Relief Plan for Dallas and)
Houston, Ordered by the Public Utility)
Commission of Texas)

NSD File No. 96-8

Administration of the North American)
Numbering Plan)

CC Docket No. 92-237

Proposed 708 Relief Plan and 630)
Numbering Plan Area Code by Ameritech-)
Illinois)

IAD File No. 94-102

**REPLY OF THE
UNITED STATES TELEPHONE ASSOCIATION**

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DEC 4 - 1996

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

I. INTRODUCTION

The United States Telephone Association ("USTA") hereby respectfully submits this Reply to certain Opposition responses to petitions for reconsideration and clarification of the *Second Report and Order* adopted by the Commission in the above-captioned docket.^{1/} USTA

^{1/} Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, FCC 96-333 (rel. Aug. 8,

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is the major trade association of the local exchange carrier industry.

A number of opposition filings simply ignore the state of technological development necessary for incumbent LECs to meet dialing parity, access to operational support systems and number administration requirements under the Act^{2/}. The Commission should reject efforts to impose unrealistic demands on incumbent LECs which cannot be met within the time frames mandated by the Commission's *Second Order*. In addition, the Commission should not shorten the deployment schedule for dialing parity, and clarify that the cost of providing numbering administration functions performed by incumbent LECs be recovered through a competitively neutral cost recovery mechanism. The Commission should also affirm its decision that paging services are not telephone exchange services.

II. THE COMMISSION SHOULD REJECT RELIEF SOUGHT IN CERTAIN OPPOSITION COMMENTS

A. Deployment Of Permanent Number Portability As A Precondition For an All-Services Overlay Plan Is Unnecessary

Several parties continue to argue that the Commission should reconsider its decision that overlay NPAs may be used to address area code exhaustion prior to the implementation of permanent number portability, because overlay plans allegedly restrict customer mobility and adversely impact competition by restricting the ability of new entrants to attract new

1996) ("*Second Order*"). USTA filed a petition for reconsideration of the *Second Order* on October 7, 1996 ("*USTA Petition*"), and a Consolidated Response on November 20, 1996 ("*USTA Response*").

^{2/} Pub. L. No. 104-104, 110 Stat. 56 (1996), *codified at* 47 U.S.C. §§151 *et seq.*

customers.^{3/} As USTA stated in its prior comments, no current plan is perfect, however, an overlay plan immediately addresses the need for NXXs, with the least impact on customers, incumbent LECs and new entrants.^{4/} Moreover, USTA noted that the Commission's *Number Portability Order* acknowledges that the databases required to implement long-term number portability have yet to be deployed which means meeting the Commission's ambitious implementation schedule will prove challenging.^{5/} The Commission correctly declined in the *Second Order* to impose these preconditions sought by some parties and focused instead upon the advantages of an overlay plan as an interim solution to long-term number portability.^{6/} The record in this proceeding simply does not support a change in the *Second Order*, and USTA urges the Commission to affirm its decision.^{7/}

^{3/} See, e.g., *AT&T Opposition* at 15; *Cox Opposition* at 2; *MCI Opposition* at 8; *NCTA Comments* at 3; *Sprint Comments* at 7; *Teleport Comments* at 3.

^{4/} See *USTA Response* at 2-5.

^{5/} See *USTA Response* at 4, citing the Commission's *Order, Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, FCC 96-286 (rel. July 2, 1996) at ¶81.

^{6/} See *USTA Response* at 3, citing the *Second Order* at ¶290.

^{7/} See also *Bell Atlantic NYNEX Mobile Opposition* at 2 ("Having correctly found that states play a critical role in selecting an NPA relief plan based on the particular needs and concerns of their citizens [t]here is no competition-related concern which comes close to warranting the effective prohibition on overlays that these petitions demand."); *BellSouth Opposition* at 1-2 (Commission should deny petitions because they "add nothing to the record" to justify reconsideration of the Commission's decision); *Pacific Telesis Group Comments* at 2 ("As the Commission found, conditioning overlays on permanent number portability would 'effectively deny state commissions the option of implementing any all-services overlays while many area codes are facing exhaust.' "); *US West Response* at 11 ("The failure of these petitioners to present any facts, much less new facts, is alone grounds for the Commission to dismiss these petitions [for reconsideration])."

B. Efforts To Increase the Number of NXX Codes Per Service Area Should Be Rejected

NCTA argues that implementation of an overlay plan should at least be conditioned on the Commission requiring that overlay plans not be deployed ‘unless each certified carrier has sufficient NXXs from existing NPA to serve its entire service territory.’^{8/} MFS argues that an overlay plan creates a competitive disadvantage for new entrants because incumbent LECs will retain the majority of existing customers under the old NXX.^{9/} These oppositions ignore the reality of the marketplace and should be rejected.

The availability of sufficient NXXs to meet demand is clearly at issue. SNET places the argument in proper context when it opines “a number portability plan prerequisite to an area code overlay simply would not solve the shortage of numbers, which is the driver for additional area codes.”^{10/} As Ameritech correctly reasons “one-code-per-carrier rule (1) works against code conservation by accelerating the need for area code relief, and (2) inhibits the ability of state commissions to implement an orderly NPA relief plan, since the industry will not be able to determine how many carriers will claim an NXX code ninety days prior to

^{8/} See, e.g., NCTA *Comments* at 5.

^{9/} See MFS *Response* at 8.

^{10/} See SNET *Comments* at 10; Pacific Telesis Group *Comments* at 4 (“[A]s the Commission found ‘guaranteeing more than one NXX ... is difficult because by the time the need for the overlay becomes imminent, few NXX codes remain unassigned in the ... area code. AT&T has offered no way around this dilemma.’”). USTA agrees with Pacific Telesis Group that AT&T “seeks to expand the Commission’s rule to truly unmanageable proportions,” clearly not intended by the Act. *Id.*

implementation of the plan.”^{11/} USTA maintains that NXXs should be assigned on a first-come, first-serve basis, and “so long as NXXs are available in an existing NPA, numbering administrators, with state oversight, should assign at least one NXX in the existing NPA to each authorized carrier prior to implementation of an all-services overlay.”^{12/} USTA’s proposal satisfies the requirements of Section 251(b)(3), while avoiding the unfair, anti-competitive and impractical aspects of the current 90-day rule which, in its present form, requires inefficient “warehousing of NXX codes on speculative grounds.”^{13/} Moreover, as the Public Utilities Commission of Ohio stated in its *Opposition* “the approach recommended by MFS and [Teleport] is extreme and should be rejected.”^{14/} USTA agrees and requests that the Commission adopt its proposal.^{15/}

^{11/} See Ameritech *Comments* at 6;

^{12/} See USTA *Response* at 6.

^{13/} See USTA *Response* at 6-7; BellSouth *Opposition and Comments* at 3 (Commission should eliminate the 90 day requirement and grant USTA’s Petition).

^{14/} See Public Utilities Commission of Ohio *Opposition* at 4.

^{15/} Airtouch supports the use of an NXX overlay plan “as a interim relief measure,” but conversely supports arguments that “all telecommunications carriers in the area to be served by the new code should be entitled to an NXX code.” See Airtouch *Comments* at 8-10. According to Airtouch, “exhaustion of NXX codes is an event which can be predicted and effectively planned for.” *Id.* at 10. Contrary to Airtouch’s position, the record in this proceeding does not provide evidence that the exhaustion of NXX codes is predictable, which in fact is the inherent problem with meeting the Commission’s requirements.

C. The Implementation Schedule For Non-BOC LECs To Deploy Toll Dialing Parity Should Not Be Shorten

MCI continues to argue that the implementation scheduled for deploying toll dialing parity by non-BOC LECs should not be shorten because it "ensures an uneven playing field until late 1999," requiring customers of such companies to dial an access code to place intraLATA toll calls.^{16/} Clearly, MCI merely repeats arguments considered by the Commission and rejected.

As USTA noted in its *Response*, the Commission's *Second Order* provides that non-BOC LECs need not meet the toll dialing parity requirement until February 8, 1999 unless certain other conditions exist.^{17/} Moreover, implementation of toll dialing parity by the deadline contemplated by the Commission will be difficult for many LECs to meet with a particular hardship for small incumbent LECs.^{18/} Sprint acknowledges that it would be "impossible to meet AT&T's proposed January 1, 1997 date."^{19/} Petitioners supporting a change in the Commission's *Second Order* have failed to present any evidence in support of reconsideration and USTA urges the Commission to reject these petitions.^{20/}

^{16/} See MCI *Opposition* at 4.

^{17/} See *Second Order* at ¶62.

^{18/} See USTA *Response* at 9; USTA *Petition* at 12.

^{19/} See Sprint *Comments* at 3. Sprint further states that [a]ccelerating the pace of dialing parity deployment could jeopardize the local number portability deployment schedule." *Id.* at 4.

^{20/} GTE correctly states "The Commission appropriately rejected AT&T's proposed January 1, 1997 implementation date ... and that determination should not be reconsidered here." GTE *Opposition* at 2. AT&T has failed to present any credible reason(s) why the Commission should change its decision.

D. Cost Recovery For Numbering Administration Should Be Borne By All Telecommunications Providers On A Competitively Neutral Basis

USTA opposes arguments by several parties including AT&T, MCI, MFS, Sprint, and Telecommunications Resellers Association^{21/} that cost recovery should not be borne by all telecommunications carriers on a competitive neutral basis. Failing to rebut requests to make implementation of number administration competitive neutral, these parties provide no substantive reasons why the Commission should not modify its earlier findings.

To reiterate USTA's previously stated position, the absence of a competitively neutral cost recovery mechanism in the Commission's *Second Order* creates an environment that is "inimical to efficient competition" because "[t]he Commission forces incumbent LECs to bear the lion's share of the total contribution to numbering administration while restricting them unduly from competing with new market entrants on a reasonable basis."^{22/} The Commission should adopt USTA's proposal that cost recovery be based upon a gross retail revenue formula.^{23/}

The Commission should also deny AT&T's request for retroactive imputation of NXX

^{21/} See, e.g., *AT&T Opposition* at 15; *MCI Opposition* at 7; *MFS Response* at 8; *Sprint Comments* at 8; *Telecommunications Resellers Association Reply* at 5-6.

^{22/} See *USTA Petition* at 6; *Ameritech Comments* at 13 ("The Commission's proposal results in a disproportionate amount of the costs being placed on facilities-based carriers and providers of wholesale services."; *Bell Atlantic Response* at 5-6 (a competitively neutral cost recovery mechanism must be adopted); *Pacific Telesis Group Comments* at 5 ("Under Section 251(e) of the Act, the 'cost of establishing telecommunications numbering arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis'").

^{23/} See *USTA Response* at 6.

codes assigned to a LEC when the LEC was the local North American Numbering Plan Code Administrator.^{24/} AT&T's request is contrary to statutory construction against retroactive application of laws, and beyond the requirements of the Act.

E. The Commission Should Deny Attempts to Require Incumbent LECs To Supply Entire Directory Assistance & Operator Service Databases

AT&T asserts that the Commission should reject attempts that would curtail access to directory assistance and operator services databases, and directory listings.^{25/} MCI categorically states that Section 251(b)(3) requires incumbent LECs "to provide their directory assistance ... and other databases to competitors."^{26/}

Nondiscriminatory access to incumbent LEC databases and subscriber lists does not mean new entrants have an ownership interest in incumbent LEC property, or that intellectual property rights of third parties can be violated by incumbent LECs with impunity simply to afford new entrants unfettered access. USTA maintains that there is an ongoing need by the Commissions to refine the definition of what nondiscriminatory access entails to ensure that the requirements of the Act are met, without imposing burdensome requirements on incumbent LECs which contravene the requirements of the Act and the legitimate interests and concerns of incumbent LECs. The Commission should grant USTA's well-reasoned request for clarification that nondiscriminatory access does not include transfer of incumbent LEC

^{24/} See BellSouth *Opposition* at 3-4.

^{25/} See AT&T *Opposition* at 11-14.

^{26/} See MCI *Opposition* at 6.

databases, and that unlisted or non-published subscriber information is prohibited from disclosed to new entrants as acknowledged by the Commission.^{27/}

F. The Commission Should Affirm That Paging Services Are Not Telephone Exchange Services

Pagenet argues that the Commission erred in excluding paging carriers from the definition of telephone exchange carrier providers, because prior precedent establishes that such companies have provided exchange services.^{28/} With respect to the Act, Pagenet has presented no evidence that remotely supports its assertion. As stated previously by USTA, the Commission should uphold its earlier decisions and deny Pagenet's request for relief.^{29/}

III. CONCLUSION

USTA respectfully requests that the Commission deny certain petitions for reconsideration or clarification of the *Second Order* and grant the relief sought by USTA in

^{27/} See USTA *Response* at 13-14; Ameritech *Comments* at 14 ("There is nothing in the Commission's Rules ... that requires LECs to transfer their directory assistance databases to competitors."); Roseville Telephone Company *Opposition* at 2-3 (The Commission should affirm that access to unlisted subscriber information is prohibited by the Act).

^{28/} See Pagenet *Opposition* at 7.

^{29/} See USTA *Response* at 11 ("Consistent with its holding in the *First Order* in this proceeding, the Commission in the *Second Order* correctly concluded that '[p]aging is not telephone exchange service within the meaning of the Act,' citing *First Order* at ¶¶1005, 1013, *Second Order* at ¶333 n.700).

accordance with its pleadings filed in this proceeding.

Respectfully submitted,

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December 4, 1996

CERTIFICATE OF SERVICE

I, Gina Thorson, do certify that on December 4, 1996 copies of USTA's Replies to Oppositions to Petitions for Review of the Second Report and Order, were either hand-delivered, or deposited in the U.S. Mail, first - class, postage prepaid to the persons on the attached service list.

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